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14/075,646	11/08/2013	Mark R. Hickman	H-13-148-US	6160

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Bose Corporation
Patent Group
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EXAMINER
PATEL, PREMAL R

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK R. HICKMAN

Appeal 2017-001190
Application 14/075,646[1]
Technology Center 2600

Before JEAN R. HOMERE, DEBRA K. STEPHENS, and JOHN A. EVANS, *Administrative Patent Judges*.

Per Curiam.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–8, 10–14, 17–22, 25, and 26. App. Br. 2. Claims 9, 15, 16, 23, and 24 have been canceled. Claims App'x. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellant, the real party in interest is Bose Corporation. App. Br. 2.

Appellant's Invention

Appellant invented a system containing cascaded displays including superimposed transparent display panels. Abstract. Each panel presents a particular type of information. Spec. ¶ 38, Fig. 2. In a passive mode, panel 102 presents persistent information, such as clock data, and panel 104 is transparent. *Id.* Upon switching to active mode, panel 102 does not present data and panel 104 presents non-persistent information. *Id.*

Illustrative Claim

Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. An apparatus comprising:
> a display device comprising:
> a first display panel on which information of a first type is displayed; and
> a second display panel on which information of a second type is displayed, the second display panel being optically transparent and superimposed over the first display panel, wherein the apparatus is configured to be switched between a first mode, in which the first display panel presents information of the first type and the second display panel does not present any information, and a second mode, in which the second display panel displays information of the second type and the first display panel does not display any information.

Prior Art Relied Up

CHO et al. ("CHO")	US 2010/0079704 A1	Apr. 1, 2010
Ostergard et al. ("Ostergard")	US 2010/0333006 A1	Dec. 30, 2010
Hagiwara et al. ("Hagiwara")	US 2011/0043486 A1	Feb. 24, 2011

Wells	US 2011/0201404 Al	Aug. 18, 2011
YUN et al. ("YUN")	US 2014/0035942 A1	Feb. 6, 2014

Rejections on Appeal

Claims 1–4, 6–8, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wells and Ostergard. Final Act. 2–5.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wells, Ostergard, and Yun. Final Act. 5–6.

Claims 10–13, 17–19, 21, 22, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wells, Cho, and Ostergard. Final Act. 12–13.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wells, Cho, Ostergard, and Hagiwara. Final Act. 6–12.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wells, Cho, Ostergard, and Yun. Final Act. 13–14.

ANALYSIS

We consider Appellant's arguments *seriatim* as they are presented in the Appeal Brief, pages 4–6, and the Reply Brief, pages 1–3. [2]

Appellant argues the proposed combination of Wells and Ostergard does not render claim 1 unpatentable. App. Br. 4–5; Reply Br. 1–3. Appellant contends that, as admitted by the Examiner, Wells does not teach

> wherein the apparatus is configured to be switched between a first mode, in which the first display panel presents information of the first type and the second display panel does not present any information, and a second mode, in which the second display panel displays information of the second type and the first display panel does not display any information.

App. Br. 4. In the Final Action, the Examiner relies on Ostergard to teach these limitations. Final Act. 3. Appellant argues incorporating Ostergard's mode switching feature into the invention of Wells, would render it unsatisfactory for its intended purpose and would change its principle of operation. App. Br. 5; Appellant additionally contends that the Examiner is solely addressing a "teaching away" argument. Reply Br. 1–2. In particular, Appellant contends Wells seeks to provide three dimensional images. App. Br. 5 (citing Wells ¶ 5); Reply Br. 2. According to Appellant, Wells provides three dimensional images "by simultaneously displaying different

[2] Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed April 28, 2016) ("App. Br."), the Reply Brief (filed October 24, 2016) ("Reply Br."), the Answer (mailed August 24, 2016) ("Ans."), and the Final Office Action (mailed December 18, 2015) ("Final Act.") for the respective details. We have considered in this Decision only those arguments Appellant actually raised in the Briefs. Any other arguments Appellant could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2012).

images (partially or wholly) on different display screens." App. Br. 5 (quoting Wells ¶ 59) (emphasis omitted); Reply Br. 2. Appellant argues modifying Wells to display information on one display panel, while no information is displayed on another display panel, would prevent the Wells device from simultaneously displaying different images on different display screens to generate three dimensional images. App. Br. 5. Appellant asserts Wells does not contemplate such an embodiment. Reply Br. 2. These arguments are not persuasive.

At the outset, we note Appellant has mischaracterized the operation of Wells to require simultaneously displaying different images on different display screens all of the time to generate three dimensional images. The Examiner correctly finds Wells teaches both display screens can display virtual three dimensional images. Ans. 16 (citing Wells ¶ 13). More specifically, Wells teaches each display screen can display virtual three dimensional images. *See* Wells ¶ 13. Thus, Wells teaches or suggests one display screen displaying virtual three dimensional images while another screen displays no information. *See* Wells ¶ 13.

The Examiner further correctly finds Wells teaches flashing a translucent image on one display screen such that image is displayed on, then off, then on, then off, and so on. Ans. 17 (citing Wells ¶ 18). We agree with the Examiner that Wells teaches the one display screen flashes off the translucent image in which no information is displayed, while the other display screen generates a game image. Ans. 17 (citing Wells ¶ 18). These teachings in Wells contradict Appellant's argument that Wells requires both screens to display information simultaneously, all of the time, to generate three dimensional images. App. Br. 5; Reply Br. 2–3. Wells teaches that

displaying information on one display screen during certain periods while displaying no information on the other display screen is sufficient for generating three dimensional images. *See* Wells ¶¶ 13, 18. Thus, the Wells device is not rendered unsatisfactory for its intended purpose of generating three dimensional images when one display screen does not display information when it is flashed off.[3] Appellant replies that this teaching provides images on both the interior and exterior display screen. Reply Br. 2–3 (citing Wells ¶ 18). However, when the Wells device flashes off for a brief period of time, the Wells device operates consistent with the teachings of Ostergard upon which the Examiner relies. Ans. 17 (citing Wells ¶ 18); Final Act. 3 (citing Ostergard ¶¶ 134, 136–138, 42, Figs. 1A, 1E, 2B, 2C). Accordingly, we find unavailing Appellant's argument that not presenting information on a display screen in the Wells device for any period of period of time renders the Wells device unsatisfactory for its intended purpose or change its principle of operation. App. Br. 5; Reply Br. 1–2. It follows Appellant has not shown error in the Examiner's rejection of claim 1.

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[3] We remind Appellant the argument that a proposed combination of references would render one of the references unsuitable for its intended purpose or would change its principle of operation is a teaching away argument. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984) (The court concluded that in effect, "French teaches away from the board's proposed modification" because "if the French apparatus were turned upside down, it would be rendered inoperable for its intended purpose"). The Federal Circuit has held "[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006) (quoting *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994)).

Regarding the rejection of claims 2–8, 10–14, 17–22, 25, and 26, to the extent Appellant has either not presented separate patentability arguments or has reiterated substantially the same arguments as those previously discussed for patentability of claim 1 above, those claims fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(vii).

DECISION

For the above reasons, the Examiner's rejection of claims 1–8, 10–14, 17–22, 25, and 26 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED